

~~REGISTRAR~~ **SOLICITOR**

TO:	Mail Stop 8 Director of the U.S. Patent and Trademark Office P. O. Box 1450 Alexandria, VA 22313-1450	5 2007	<b>REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK</b>
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In Compliance with 35 § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been  
 filed in the U.S. District Court Eastern District of Louisiana on the following ☒ Patents or ☐ Trademarks:

DOCKET NO. 07-1427, J (5)	DATE FILED 3/26/07	U.S. DISTRICT COURT Eastern District of Louisiana, 500 POYDRAS St., Rm C-151, New Orleans, LA
PLAINTIFF METAL FUSION, INC.		DEFENDANT TEST-RITE PRODUCTS CORP.
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 6,439,107	8/27/02	Metal Fusion, Inc.
2		
3		
4		
5		

In the above—entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading		
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK	
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In the above—entitled case, the following decision has been rendered or judgment issued:

DECISION/JUDGMENT Case closed for statistical purposes on 10/22/07.
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CLERK LORETTA G. WHYTE	(BY) DEPUTY CLERK <i>Stephen Kelli</i>	DATE October 29, 2007
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Copy 1—Upon initiation of action, mail this copy to Commissioner Copy 3—Upon termination of action, mail this copy to Commissioner  
 Copy 2—Upon filing document adding patent(s), mail this copy to Commissioner Copy 4—Case file copy

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

MENTAL FUSION, INC.

CIVIL ACTION

VERSUS

NO: 07-1427

TEST-RITE PRODUCTS CORP.

SECTION: "J" (5)

**ORDER**

Considering the motion of Metal Fusion, Inc., and the arguments contained therein;

**IT IS ORDERED** that Plaintiff's Motion to Stay is **GRANTED**;

**IT IS FURTHER ORDERED** that this action is STAYED pending the outcome of the Reexamination Proceedings before the United States Patent and Trademark Office;

**IT IS FURTHER ORDERED** that the Clerk of Court mark this action closed for statistical purposes. The Court shall retain jurisdiction and the case shall be restored to the trial docket upon motion of a party if circumstances change, so that it may proceed to final disposition. This order shall not prejudice the rights of the parties to this litigation.

New Orleans, Louisiana this the 22nd day of October, 2007.

CLERK'S OFFICE  
A TRUE COPY

OCT 29 2007

Deputy Clerk, U.S. District Court  
Eastern District of Louisiana  
New Orleans, La.

*Carl J. Barbier*  
CARL J. BARBIER  
UNITED STATES DISTRICT JUDGE

FILED  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF LA  
2007 MAR 26 AM 11:25  
LORETTA G. WHYTE  
CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

METAL FUSION, INC.

*Plaintiff*

VERSUS

TEST-RITE PRODUCTS CORP

*Defendant*

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CIVIL ACTION

NO. **07-1427**

SECTION

MAG

**SECT. J MAG 5**

COMPLAINT

NOW INTO COURT, through undersigned counsel, comes METAL FUSION, INC. (hereinafter referred to as "METAL FUSION"), for its Complaint against Defendant TEST-RITE PRODUCTS CORP. d/b/a NORTH AMERICAN OUTDOORS (hereinafter referred to as "TEST-RITE") herein, alleges as follows:

NATURE OF THE ACTION

1. This action is based on the Patent Laws of the United States, 35 U.S.C. §1 et seq.
2. This action arises out of defendant's making, using, selling, offering to sell, and/or importing into the United States, as well as defendant's inducement of and contribution to the making, use, sale, offering to sell, and/or importing into the United States, of gas fired outdoor cooking systems which infringe valid patents owned by METAL FUSION.

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### **THE PARTIES**

3. Plaintiff, METAL FUSION, is a corporation organized and existing under the laws of the State of Louisiana and having a place of business at 712 St. George Avenue, Jefferson, Louisiana. METAL FUSION is in the business of developing and selling gas fired outdoor cooking systems.

4. Defendant, TEST-RITE d/b/a NORTH AMERICAN OUTDOORS, is a corporation organized and existing under the laws of the State of California and having a place of business located at 1900 S. Burgandy Place, Ontario, California (in San Bernandino County). On information and belief TEST-RITE d/b/a NORTH AMERICAN OUTDOORS sells various barbeques grills, barbeque accessories, and outdoor cooking systems.

### **JURISDICTION**

5. This action arises under the Patent Act, 35 U.S.C. §1 et seq. The Court has original subject matter jurisdiction over such claims pursuant to 28 U.S.C. §§ 1331 and 1338(a).

6. The Court has personal jurisdiction over the parties, and venue in this Judicial District is proper under 28 U.S.C. §§ 1391(b) and (c), and/or 1400(b).

### **PLAINTIFF AND ITS RIGHTS**

7. METAL FUSION has been in the gas fired outdoor cooking business since, at least, 1979. METAL FUSION has developed and sold gas fired outdoor cooking systems in the United States and worldwide.

8. METAL FUSION has developed innovative technology relating to its gas fired outdoor cooking systems. The United States Patent and Trademark Office ("PTO") has recognized METAL FUSION's innovations by awarding numerous United States patents covering METAL FUSION's cooking systems.

9. On August 27, 2002, the PTO duly and lawfully issued United States Patent No. 6,439,107 ("the '107 Patent"), entitled "Gas Fired Outdoor Cooking Apparatus." METAL FUSION is the assignee and sole owner of the '107 Patent, a true and correct copy of which is attached hereto as Exhibit 1.

#### **DEFENDANT AND ITS UNLAWFUL ACTIVITIES**

10. On information and belief, TEST-RITE is making, using, selling, offering to sell, and/or importing into the United States, as well as defendant's inducement of and contribution to the making, using, selling, offering to sell, and/or importing into the United States, of gas fired outdoor cooking systems which infringe one or more claims of the '107 Patent. One such infringing cooking system is marketed under the name "SAF-T-FRYER."

11. On information and belief, TEST-RITE is actively and knowingly encouraging others in the making, using, selling, offering to sell, and/or importing into the United States, of cooking systems made or adapted specifically for such use and having no substantial non-infringing use, thereby contributing to the direct infringement by others of one or more claims of the '107 Patent.

12. On information and belief, TEST-RITE is actively and knowingly aiding and abetting the direct infringement of the '107 Patent with knowledge thereof by, inter alia, designing,

encouraging, and instructing others to use cooking systems that infringe the '107 Patent, thereby inducing the direct infringement by others of one or more claims of the '107 Patent.

### **PATENT INFRINGEMENT**

13. METAL FUSION repeats and realleges each of the allegations contained in the above paragraphs of this Complaint as if fully set forth herein.

14. On information and belief, in the United States and in this Judicial District, TEST-RITE has been, and is, infringing - - directly, contributorily, and/or by inducement - - one or more claims of the '107 Patent by making, using, selling, offering to sell, and/or importing into the United States, as well as defendant's inducement of and contribution to the making, using, selling, offering to sell, and/or importing into the United States, of gas fired outdoor cooking systems which infringe one or more claims of the '107 Patent.

15. By infringing - - directly, contributorily, and by inducement - - one or more claims of the '107 Patent, TEST-RITE has unfairly reaped a substantial commercial and competitive advantage and savings in research, development, costs, and marketability, all to METAL FUSION's detriment.

16. TEST-RITE's activities with respect to its infringing cooking systems constitute willful infringement of one or more claims of the '107 Patent.

17. METAL FUSION has been, and will continue to be, damaged by such direct, contributory, and induced infringement in an amount to be proven at trial and in a manner and amount that cannot be fully measured or compensated in economic terms and for which there is no adequate remedy at law. The actions of TEST-RITE have damaged, and will continue to damage,

METAL FUSION's business, market, reputation, and goodwill. Such irreparable damage will continue unless the acts of TEST-RITE are enjoined during the pendency of this action and thereafter. METAL FUSION is, therefore, entitled to the remedies provided by 35 U.S.C. §§283-285.

**PRAYER FOR RELIEF**

WHEREFORE, METAL FUSION, prays for judgment that:

1. TEST-RITE and its officers, agents, servants, employees, and attorneys and all other persons in active concert or participation with any of them, be enjoined and restrained during the pendency of this action and permanently thereafter from infringing any claim of the '107 Patent.
2. TEST-RITE be ordered to pay METAL FUSION such damages as METAL FUSION has sustained and adequate to compensate for the patent infringement, including METAL FUSION's lost profits, but in no event less than a reasonable royalty, as provided by 35 U.S.C. §284.
3. TEST-RITE's infringement of the '107 Patent be found to have been willfully committed by defendant and that the damages be increased to three times the amount assessed, as provided by 35 U.S.C. §284.
4. TEST-RITE be ordered to pay METAL FUSION the costs of this action and its reasonable attorneys' fees, and interest, as provided by 35 U.S.C. §284 and 35 U.S.C. §285.
5. TEST-RITE be ordered to pay METAL FUSION prejudgment interest on all sums awarded.
6. METAL FUSION have such other and further relief as this Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff demands a trial by jury as to all issues so triable.

Respectfully submitted,



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